

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

LN MANAGEMENT LLC SERIES 2543
CITRUS GARDEN,

Plaintiff,

v.

MARCELLE GELGOTAS, et al.,

Defendants,

FEDERAL HOUSING FINANCE AGENCY,
as Conservator for the Federal National
Mortgage Association,

Intervenor.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Counterclaimant,

FEDERAL HOUSING FINANCE AGENCY,
as Conservator for the Federal National
Mortgage Association,

Intervenor,

v.

LN MANAGEMENT LLC SERIES 2543
CITRUS GARDEN, et al.

Counter-Defendants.

Case No. 2:15-cv-00112-MMD-CWH

ORDER

(Joint Motion for Summary Judgment –
dkt. no. 32)

I. SUMMARY

After purchasing property through a foreclosure sale, Plaintiff initiated this action for quiet title in Nevada state court. (Dkt. no. 6-2.) Plaintiff contends that it owns property located at 2543 Citrus Garden Circle, Henderson, Nevada ("the Property") absent any

1 other right, title, or interest in the Property. (*Id.* at 4-5.) After removing the lawsuit,
 2 Defendant Federal National Mortgage Association ("Fannie Mae") and Intervenor
 3 Federal Housing Finance Agency ("FHFA") filed a Joint Motion for Summary Judgment
 4 ("Motion") (dkt. no. 32), arguing that Plaintiff cannot demonstrate, as a matter of law, that
 5 it owns the Property free and clear of any other right, title, or interest. The Court has
 6 reviewed response briefs filed by Plaintiff (dkt. no. 46) and former¹ Counter-Defendant
 7 Green Valley Ranch Community Association, Inc. ("Green Valley") (dkt. no. 47). The
 8 Court has also reviewed Fannie Mae and FHFA's reply brief (dkt. no. 52). For the
 9 reasons discussed below, the Court will deny the Motion.

10 II. BACKGROUND

11 On March 26, 2003, a Deed of Trust ("DOT") securing a \$152,000 loan for the
 12 Property ("the Loan") was recorded. (Dkt. no. 33-1 at 2-3.)² The DOT lists Mercury
 13 Mortgage as the lender and Marcelle Gelgotas as the borrower. (*Id.* at 2.) The DOT also
 14 includes a Planned Unit Development Rider that identifies the Property as part of the
 15 Green Valley Ranch planned unit development. (*Id.* at 13.) Fannie Mae alleges that it
 16 subsequently purchased the Loan from Principal Residential Mortgage Capital
 17 Resources, LLC on or about April 1, 2003. (Dkt. no. 32-2 at 4, 7.) Five years later, in
 18 September 2008, Fannie Mae was placed into conservatorship, and FHFA was
 19 appointed as its conservator. (Dkt. no. 32-1 at 3.)

20 ///

21
 22 ¹On March 2, 2016, Fannie Mae and FHFA filed a stipulation to voluntarily dismiss
 23 their counter-claims against Green Valley without prejudice. (Dkt. no. 63.) The Court
 24 granted the stipulation on March 9, 2016. (Dkt. no. 64.) The Court will nevertheless
 address the arguments raised in Green Valley's response brief because they go to the
 merits of Fannie Mae and FHFA's Motion.

25 ²Fannie Mae and FHFA request judicial notice of certain public records to support
 26 their Motion. (Dkt. no. 33.) Under Rule 201 of the Federal Rules of Evidence, courts may
 27 take judicial notice of "undisputed matters of public record." *Disabled Rights Action*
 28 *Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 866 n.1 (9th Cir. 2004). Fannie Mae
 and FHFA's request includes matters of public record like the DOT, a Corporate
 Assignment Deed of Trust, several recorded documents regarding the borrower's default
 and Green Valley's election to sell, and the Trustee's Deed Upon Sale. (See dkt. no. 33-
 1.) The Court will take judicial notice of these undisputed public records.

1 In April 2010, Green Valley recorded a Notice of Claim of Delinquent Assessment
2 Lien on the Property, indicating that owners Mark and Michelle Rock owed \$913.96 in
3 unpaid assessments, fees, fines, and interest to Green Valley. (Dkt. no. 33-1 at 21.)
4 Green Valley subsequently recorded a Notice of Default and Election to Sell on July 12,
5 2011. (*Id.* at 24-25.) Two years later, on July 11, 2013, Green Valley recorded a Notice
6 of Foreclosure Sale; a Trustee's Deed Upon Sale was recorded on August 21, 2013,
7 indicating that the Property was sold to Plaintiff at a public auction on August 6, 2013
8 ("the Foreclosure Sale"). (*Id.* at 28-29, 32-33.)

9 Almost a year later, on June 27, 2014, CitiMortgage, Inc., the successor in
10 interest to Principal Residential Mortgage, Inc., conveyed the Property's DOT to Fannie
11 Mae. (*Id.* at 17.) The conveyance was recorded through a Corporate Assignment Deed
12 of Trust on June 30, 2014. (*Id.*)

13 Plaintiff filed this lawsuit in Nevada state court on January 20, 2014, seeking quiet
14 title and a declaratory judgment that Plaintiff rightfully owned the Property without any
15 encumbrances.³ (Dkt. no. 6-2 at 3-5.) Plaintiff initially sued Principal Residential
16 Mortgage, Inc. as the successor in interest to Mercury Mortgage, but on December 29,
17 2014, the state court granted the parties' stipulation to substitute Fannie Mae for
18 Principal Residential Mortgage. (Dkt. no. 6-10.) The parties had stipulated that Fannie
19 Mae purchased the Loan on or about April 1, 2003; that after the DOT was created,
20 Principal Residential Mortgage merged with CitiMortgage, Inc.; and that CitiMortgage
21 assigned its interest in the DOT to Fannie Mae in June 2014. (*Id.* at 5-8.) Fannie Mae
22 removed the lawsuit to this Court on January 20, 2015. (Dkt. no. 6.)⁴

23 ///

24 _____
25 ³Plaintiff alternatively sought a determination of any unextinguished interests in
26 the Property, and an order compelling the parties holding those interests to "accept
27 payments under the terms of any surviving lien." (Dkt. no. 6-2 at 4-5.)

28 ⁴Fannie Mae filed a corrected version of its Petition for Removal (dkt. no. 6) on
January 21, 2015. The corrected version appears to include additional exhibits
demonstrating that all properly served Defendants consented to removal. (Dkt. no. 6-12.)
The Court will refer to the corrected Petition for Removal in this Order.

1 FHFA intervened as Fannie Mae's conservator in February 2015. (Dkt. nos. 15,
2 19.) Several days later, Plaintiff and Green Valley stipulated to dismiss Green Valley
3 without prejudice. (Dkt. nos. 20, 23.) FHFA and Fannie Mae filed the Motion on March
4 20, 2015, and the parties agreed to stay discovery pending its resolution. (Dkt. nos. 32,
5 35, 38.) The Court held a hearing on the Motion (along with several similar motions in
6 related cases) on February 10, 2016. (Dkt. no. 61.)

7 III. LEGAL STANDARD

8 "The purpose of summary judgment is to avoid unnecessary trials when there is
9 no dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*,
10 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when "the movant
11 shows that there is no genuine dispute as to any material fact and the movant is entitled
12 to a judgment as a matter of law." Fed. R. Civ. P. 56(a); see *Celotex Corp. v. Catrett*,
13 477 U.S. 317, 322 (1986). An issue is "genuine" if there is a sufficient evidentiary basis
14 on which a reasonable fact-finder could find for the nonmoving party and a dispute is
15 "material" if it could affect the outcome of the suit under the governing law. *Anderson v.*
16 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Where reasonable minds could differ on
17 the material facts at issue, however, summary judgment is not appropriate. See *id.* at
18 250-51. "The amount of evidence necessary to raise a genuine issue of material fact is
19 enough 'to require a jury or judge to resolve the parties' differing versions of the truth at
20 trial.'" *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat'l*
21 *Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968)). In evaluating a summary
22 judgment motion, a court views all facts and draws all inferences in the light most
23 favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793
24 F.2d 1100, 1103 (9th Cir. 1986).

25 The moving party bears the burden of showing that there are no genuine issues
26 of material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). "In
27 order to carry its burden of production, the moving party must either produce evidence
28 negating an essential element of the nonmoving party's claim or defense or show that

1 the nonmoving party does not have enough evidence of an essential element to carry its
2 ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210
3 F.3d 1099, 1102 (9th Cir. 2000). Once the moving party satisfies Rule 56’s requirements,
4 the burden shifts to the party resisting the motion to “set forth specific facts showing that
5 there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256. The nonmoving party “may
6 not rely on denials in the pleadings but must produce specific evidence, through
7 affidavits or admissible discovery material, to show that the dispute exists,” *Bhan v. NME*
8 *Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and “must do more than simply show
9 that there is some metaphysical doubt as to the material facts.” *Orr v. Bank of Am. NT &*
10 *SA*, 285 F.3d 764, 783 (9th Cir. 2002) (quoting *Matsushita Elec. Indus. Co. v. Zenith*
11 *Radio Corp.*, 475 U.S. 574, 586 (1986)). “The mere existence of a scintilla of evidence in
12 support of the plaintiff’s position will be insufficient.” *Anderson*, 477 U.S. at 252.

13 IV. ANALYSIS

14 Fannie Mae and FHFA argue that Plaintiff cannot, as a matter of law, establish
15 that it owns the Property free and clear of any other interests because federal law
16 protects Fannie Mae’s property interest from foreclosures to which FHFA — as Fannie
17 Mae’s conservator — has not consented. (See *dk.* no. 32 at 8-12.) They further contend
18 that federal law preempts the Nevada law on which Plaintiff relies in asserting that the
19 Foreclosure Sale extinguished Fannie Mae’s interest in the Property. (*Id.* at 6-8.) In
20 response, Plaintiff and Green Valley argue that Fannie Mae lacked — or failed to offer
21 evidence of — a recorded interest in the Property at the time of the Foreclosure Sale,
22 such that the federal law protections cannot apply to this case. (See *dk.* no. 46 at 3-7;
23 *dk.* no. 47 at 7-11.) Green Valley further contests whether Fannie Mae and FHFA have
24 submitted evidence that, when read in the light most favorable to the non-moving
25 parties, demonstrates that Fannie Mae had an interest in the Property before the
26 Foreclosure Sale. (*Id.* at 7-9.) Green Valley requests additional discovery on that issue.
27 (*Id.*) The Court will address these arguments in turn.

28 ///

1 **A. Background on Relevant State and Federal Law**

2 Under NRS § 116.3116, a homeowners' association ("HOA") can establish a "lien
3 on a unit for . . . any assessment levied against that unit or any fines imposed against
4 the unit's owner from the time . . . the assessment or fine becomes due." NRS
5 § 116.3116(1). Section 116.3116 further provides that such a lien "is prior to all other
6 liens and encumbrances on a unit except," among other categories of liens, "[a] first
7 security interest on the unit recorded before the date on which the assessment sought to
8 be enforced became delinquent." NRS § 116.3116(2)(b). The statute, however, contains
9 an exception to this exception, allowing an HOA to establish a lien that takes priority over
10 a first security interest for unpaid assessments over a nine-month period preceding the
11 enforcement of the lien. NRS § 116.3116.⁵

12 In 2014, the Nevada Supreme Court ruled that NRS § 116.3116 creates a "true
13 superpriority lien" for 9 months of unpaid HOA assessments and certain charges. *SFR*
14 *Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 419 (Nev. 2014) (en banc).
15 Accordingly, the court further held, a nonjudicial foreclosure of an HOA lien under NRS
16 § 116.3116 would extinguish any first deed of trust, so long as certain statutory notice
17 requirements are followed. *See id.* at 411-17. Here, Plaintiff relies on this framework to
18 argue that the 2013 Foreclosure Sale extinguished the first DOT that Fannie Mae claims
19 to have held on the Property.

20 Fannie Mae and FHFA, however, point out that the Housing and Economic
21 Recovery Act of 2008 ("HERA"), 122 Stat. 2654 (2008), both created FHFA and
22 established certain protections for property under FHFA's control as conservator of
23

24 ⁵Section 116.3116 was amended and reorganized in 2015. *See* 2015 Nev. Stat.
25 1331, 1334. The statute retains the exceptions described above, but creates a separate
26 subsection (NRS § 116.3116(3)), which states that an HOA lien may take priority over a
27 first deed of trust for "[t]he unpaid amount of assessments . . . which would have become
28 due in the absence of acceleration during the 9 months immediately preceding the date
 on which the notice of default and election to sell is recorded," in addition to certain
 charges and costs. NRS § 116.3116(3). To avoid confusion over the recently
 reorganized subsections, the Court will cite to NRS § 116.3116 generally in discussing
 the provisions that give an HOA a first priority lien.

1 Fannie Mae.⁶ See 12 U.S.C. § 4617(j) (listing protections). FHFA became Fannie Mae's
 2 conservator in 2008. (Dkt. no. 32-1 at 3.) HERA provides that when FHFA acts as a
 3 conservator, "[n]o property of [FHFA] shall be subject to . . . foreclosure[] or sale without
 4 the consent of [FHFA]." 12 U.S.C. § 4617(j)(3). The effects of this provision ("the
 5 Consent Provision") are at the heart of the parties' dispute.

6 **B. Whether 12 U.S.C. § 4617(j)(3) Preempts NRS § 116.3116**

7 Fannie Mae and FHFA contend that, pursuant to the Consent Provision, the
 8 Foreclosure Sale could not have extinguished Fannie Mae's interest in the Property
 9 without FHFA's consent. (See dkt. no. 32 at 6-8.) They are careful to clarify that they do
 10 not contest whether, in general, an HOA foreclosure sale can extinguish a first deed of
 11 trust under Nevada law. (See dkt. no. 52 at 8.) Instead, Fannie Mae and FHFA argue
 12 that the Consent Provision conflicts with NRS § 116.3116 because Nevada's laws would
 13 allow Fannie Mae's interest in the Property to be extinguished without FHFA's consent.
 14 See *SFR Invs. Pool 1*, 334 P.3d at 419. In short, the Consent Provision requires consent
 15 before Fannie Mae's property interest could be foreclosed while Nevada law does not.
 16 Fannie Mae and FHFA thus assert that the Consent Provision preempts NRS
 17 § 116.3116. (Dkt. no. 32 at 6-8.) The Court agrees.

18 Federal preemption emanates from the Supremacy Clause, which provides that
 19 the "Laws of the United States . . . shall be the supreme Law of the Land." U.S. Const.
 20 art. VI, cl. 2. "There are 'three classes of preemption': express preemption, field
 21 preemption and conflict preemption." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022
 22 (9th Cir. 2013) (quoting *United States v. Alabama*, 691 F.3d 1269, 1281 (11th Cir.
 23 2012)). Relevant here, conflict preemption occurs where state law conflicts with a federal
 24 statute. *Id.* at 1023. Conflict preemption "has two forms: impossibility and obstacle
 25 preemption." *Id.* Impossibility preemption arises "where it is impossible for a private party
 26

27 ⁶FHFA may serve as the conservator or receiver to a "regulated entity." 12 U.S.C.
 28 § 4617(a)(1). A regulated entity includes Fannie Mae, the Federal Home Loan Mortgage
 Corporation ("Freddie Mac"), or any Federal Home Loan Bank. 12 U.S.C. § 4502(20).

1 to comply with both state and federal law.” *Id.* (quoting *Crosby v. Nat’l Foreign Trade*
 2 *Council*, 530 U.S. 363, 372 (2000)). Obstacle preemption occurs where a state law is “an
 3 obstacle to the accomplishment and execution of the full purposes and objectives of
 4 Congress.” *Id.* (quoting *Arizona v. United States*, 132 S. Ct. 2492, 2501 (2012)).

5 Two pillars of the Supreme Court’s preemption jurisprudence must guide the
 6 Court’s analysis in this case. *Id.* First, “the purpose of Congress is the ultimate
 7 touchstone in every pre-emption case.” *Id.* (quoting *Wyeth v. Levine*, 555 U.S. 555, 565
 8 (2009)). Second, “courts should assume that the ‘historic police powers of the States’ are
 9 not superseded ‘unless that was the clear and manifest purpose of Congress.’” *Arizona*,
 10 132 S. Ct. at 2501 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).
 11 Applying these guidelines here, the Court finds that § 4617(j)(3) conflicts with NRS
 12 § 116.3116 to the extent that the Nevada statute created a superpriority HOA lien
 13 capable of extinguishing Fannie Mae’s interest in the Property without FHFA’s consent.

14 **1. NRS § 116.3116 Conflicts with the Consent Provision**

15 Through HERA, Congress gave FHFA broad powers to act as Fannie Mae’s
 16 conservator. FHFA assumed that role in 2008 as a “result of the economic downturn and
 17 housing market collapse, which eroded the value of [Fannie Mae’s] assets.” *Cty. of*
 18 *Sonoma v. Fed. Hous. Fin. Agency*, 710 F.3d 987, 989 (9th Cir. 2013). When FHFA
 19 became Fannie Mae’s conservator, FHFA succeeded to “all rights, titles, powers, and
 20 privileges” of Fannie Mae, including, Fannie Mae and FHFA argue, Fannie Mae’s
 21 interest in the Property. 12 U.S.C. § 4617(b)(2)(A)(i). Under HERA, FHFA may “take
 22 actions ‘necessary to put the regulated entity in a sound and solvent condition’ and
 23 actions as may be appropriate to ‘preserve and conserve the assets and property of the
 24 regulated entity.’” *Id.* at 990 (quoting 12 U.S.C. § 4617(b)(2)(D)). To facilitate the
 25 protection of assets under FHFA’s control as Fannie Mae’s conservator, HERA further
 26 provides in the Consent Provision that “[n]o property of [FHFA] shall be subject to levy,
 27 attachment, garnishment, foreclosure, or sale without the consent of [FHFA].” 12 U.S.C.
 28 § 4617(j)(3). The Nevada Supreme Court, by contrast, has interpreted NRS § 116.3116

1 as creating a “true superpriority lien, proper foreclosure of which will extinguish a first
2 deed of trust.” *SFR Invs. Pool 1*, 334 P.3d at 419. Thus, under Nevada law, an HOA
3 foreclosure could extinguish Fannie Mae’s property interest without FHFA’s consent.

4 Rather than protecting properties under FHFA’s control as conservator, NRS
5 § 116.3116 acts as an obstacle to FHFA’s ability to “preserve and conserve the assets
6 and property of [Fannie Mae].” 12 U.S.C. § 4617(b)(2)(B)(iv). If, as Fannie Mae and
7 FHFA allege here, NRS § 116.3116 allowed the Foreclosure Sale to terminate Fannie
8 Mae’s interest in the Property without FHFA’s consent, then the Nevada law effectively
9 impedes FHFA from taking actions “necessary to put [Fannie Mae] in a sound and
10 solvent condition.” 12 U.S.C. § 4617(b)(2)(D)(i). Thus, as interpreted by the Nevada
11 Supreme Court in *SFR Investments Pool 1*, 334 P.3d at 419, NRS § 116.3116 directly
12 conflicts with the plain language of the Consent Provision. The Court therefore finds that
13 NRS § 116.3116 is preempted to the extent that it allows an HOA foreclosure sale to
14 extinguish a first deed of trust held by FHFA as Fannie Mae’s conservator without
15 FHFA’s consent. This conclusion aligns with the persuasive reasoning of other courts in
16 this District, which have found that the Consent Provision displaces NRS § 116.3116 to
17 the extent that the statutes conflict. See, e.g., *Skylights LLC v. Byron*, 112 F. Supp. 3d
18 1145, 1159 (D. Nev. 2015) (“The Court finds that 12 U.S.C. § 4617(j)(3) preempts [NRS]
19 § 116.3116 to the extent that a homeowner association’s foreclosure of its super-priority
20 lien cannot extinguish a property interest of Fannie Mae or Freddie Mac while those
21 entities are under FHFA’s conservatorship.”)

22 **2. Green Valley’s Arguments Regarding 12 U.S.C. § 1825 Are**
23 **Unpersuasive**

24 Neither Plaintiff nor Green Valley explicitly argue that NRS § 116.3116 is not
25 preempted by the Consent Provision. (See dkt. nos. 46, 47.) Green Valley does argue,
26 however, that the Consent Provision “is not as expansive as the moving parties suggest”
27 (dkt. no. 47 at 14), insisting that 12 U.S.C. § 1825(b)(2) — an analogous provision that

28 ///

1 applies to the Federal Deposit Insurance Corporation ("FDIC")⁷ — does not cover liens
2 attached by private entities. (Dkt. no. 47 at 14-15.) Green Valley relies on *FDIC v.*
3 *McFarland*, 243 F.3d 876, 886 (5th Cir. 2001), where the Fifth Circuit held that
4 § 1825(b)(2) extends only to liens created by state and local taxing authorities. Fannie
5 Mae and FHFA suggest that *McFarland* appears to be anomalous in holding that
6 § 1825(b)(2) is so limited. (Dkt. no. 52 at 21-23.) But even assuming, without deciding,
7 that § 1825(b)(2) applies only to tax liens, such a reading would run counter to the plain
8 language and structure of the Consent Provision.

9 In limiting § 1825(b)(2) to tax liens, the *McFarland* court relied on the historical
10 structure and title of 12 U.S.C. § 1825, which formerly dealt only with taxation.
11 *McFarland*, 243 F.3d at 886. The court also looked to the statute's legislative history,
12 finding no evidence that Congress added § 1825(b)(2) to extend the reach of § 1825
13 beyond the taxation context. See *id.* Here, however, Green Valley has not offered any
14 legislative history to suggest that a similarly narrow reading could be applied to the
15 Consent Provision. (See dkt. no. 47 at 14-15.) More important, Green Valley ignores the
16 structure and titles of 12 U.S.C. § 4617(j) ("Subsection J"), where the Consent Provision
17 appears. Subsection J applies "with respect to [FHFA] in any case in which [FHFA] is
18 acting as a conservator or a receiver." 12 U.S.C. § 4617(j)(1). It includes separate
19 provisions for "Taxation," "Property Protection" — the Consent Provision at issue here —
20 and "Penalties and Fines." 12 U.S.C. § 4617(j)(2)-(4). Similar to the Consent Provision,
21 which protects property under FHFA's control from unwanted foreclosures or sales, the
22 "Taxation" and "Penalties and Fines" provisions limit the extent to which FHFA and
23 property under its control can be taxed or made subject to penalties or fines. 12 U.S.C. §
24 4617(j)(3)-(4). Section 1825(b) similarly addresses taxation, property protection, and
25 ///

26 ⁷Section 1825(b)(2) reads: "No property of the Corporation shall be subject to
27 levy, attachment, garnishment, foreclosure, or sale without the consent of the
28 Corporation, nor shall any involuntary lien attach to the property or the Corporation." 12
U.S.C. § 1825(b)(2).

1 penalties and fines. 12 U.S.C. § 1825(b)(1)-(3). But those provisions are not separately
2 labeled like the provisions in Subsection J.

3 Considering the clear language, titles, and structure of Subsection J, and absent
4 persuasive argument to suggest that the *McFarland* court's reasoning should apply with
5 equal force to the Consent Provision, Green Valley has not demonstrated that the
6 Consent Provision should be limited to tax liens only. The Consent Provision plainly
7 applies to an HOA lien. Thus, Green Valley's arguments about *McFarland* do not affect
8 the Court's conclusion that the Consent Provision preempts NRS § 116.3116.

9 **C. Fannie Mae's Interest in the Property**

10 Although the Court finds that the Consent Provision preempts NRS § 116.3116,
11 the Court cannot grant summary judgment unless Fannie Mae and FHFA show that the
12 Property constitutes "property of [FHFA]." 12 U.S.C. § 4617(j)(3). Fannie Mae and FHFA
13 assert that FHFA's property interests are broad, extending to mortgages and liens that it
14 controls as Fannie Mae's conservator. (Dkt. no. 32 at 8 (citing *Simon v. Cebreck*, 53 F.3d
15 17, 21 (3d Cir. 1995) (concluding that 12 U.S.C. § 1852(b)(2), with protects property
16 interests of the FDIC, extends to both fee and lien interests)).) Fannie Mae's 2003
17 purchase of the Loan, the moving parties argue, places the Property among the property
18 interests that would be protected by the Consent Provision. (*See id.* at 8-9.) Plaintiff and
19 Green Valley, however, suggest that there is a genuine dispute of material fact with
20 regard to Fannie Mae's interest in the Property. (Dkt. no. 46 at 5; dkt. no. 47 at 8-11.)
21 They argue that Fannie Mae and FHFA have failed to provide enough evidence — or
22 have provided contradictory evidence — to meet their initial burden of establishing that
23 Fannie Mae had an interest in the Property at the time of the Foreclosure Sale.⁸

24 ⁸Fannie Mae and FHFA argue that Plaintiff and Green Valley have repackaged a
25 legal dispute over the nature of Fannie Mae's interest in the Property (and whether that
26 interest needed to be recorded under Nevada law) into a factual dispute. (Dkt. no. 52 at
27 4.) Fannie Mae and FHFA are correct that Plaintiff and Green Valley challenge the legal
28 import of Fannie Mae's purchase of the Loan. (*See* dkt. no. 46 at 4; dkt. no. 47 at 9-11.)
But the disputes over when Fannie Mae acquired its interest in the Property, and
whether Fannie Mae and FHFA have presented sufficient evidence to establish the date
of acquisition are both factual in nature and intertwined with this legal dispute. Because
(*fn. cont.*)

1 Fannie Mae and FHFA assert that Fannie Mae purchased the Loan on or about
2 April 1, 2003. (Dkt. no. 32-2 at 4.) They offer the declaration of John Curcio (the "Curcio
3 Declaration"), Fannie Mae's Assistant Vice President, which includes printouts from
4 Fannie Mae's Servicer and Investor Reporting system (the "SIR Exhibits"). (*Id.* at 6-9,
5 11.) The SIR Exhibits state that Fannie Mae acquired the Loan on April 1, 2003, from
6 Principal Residential Mortgage Capital Resources, LLC; the listed loan amount is
7 \$152,000.00. (*Id.* at 7-8.) Green Valley asserts that these documents fail to demonstrate
8 an absence of disputed material fact as to whether Fannie Mae acquired a legal interest
9 in the Property before the 2013 Foreclosure Sale. (See dkt. no. 47 at 5, 7-8.) Green
10 Valley points to the Corporate Assignment Deed of Trust dated June 27, 2014 — which
11 conveyed CitiMortgage's DOT to Fannie Mae — to show that the facts regarding the
12 point at which Fannie Mae acquired its interest are disputed. (*Id.* at 8 (citing dkt. no. 33-1
13 at 17).) Green Valley further contends that it should be allowed to pursue discovery to
14 determine this date. (*Id.* at 8-9.)

15 Although they offer the Curcio Declaration and the SIR Exhibits to establish that
16 Fannie Mae purchased the Loan in 2003, Fannie Mae and FHFA have failed to satisfy
17 their initial burden of showing "that there is no genuine dispute of any material fact" as to
18 Fannie Mae's interest in the Property. Fed. R. Civ. P. 56(a). To be fair, Mr. Curcio
19 asserts that he is personally familiar with the internal system from which the SIR Exhibits
20 were printed. (Dkt. no. 32-2 at 3.) He further states that the SIR Exhibits were made in
21 the regular course of Fannie Mae's business. (*Id.*) The Curcio Declaration and the SIR
22 Exhibits thus appear to be properly authenticated business records that the Court may
23 consider in ruling on the Motion. See *Orr*, 285 F.3d at 773 ("A trial court can only
24 consider admissible evidence in ruling on a motion for summary judgment.").

25 ///

26
27 (*...fn. cont.*)

28 the Court finds that the factual dispute prevents summary judgment at this stage of the
proceedings, the Court need not resolve the legal dispute in this Order.

1 But when read in the light most favorable to the non-moving parties, neither the
2 Curcio Declaration nor the SIR Exhibits establishes that there is no genuine dispute of
3 material fact as to when Fannie Mae acquired the requisite interest in the Property, and
4 what the contours of that interest are. The SIR Exhibits appear to be internal documents
5 created by Fannie Mae for tracking purposes. (See dkt. no. 32-2 at 6-9, 11.) They
6 suggest that Fannie Mae acquired the \$152,000.00 Loan for the Property on or around
7 April 1, 2003, from Principal Residential Mortgage Capital Resources, LLC. (*Id.* at 7-8.)
8 The SIR Exhibits also describe the Loan as having a "First Lien" position and list the
9 servicer as "Fannie Mae/Seterus, Inc. as subservicer." (*Id.* at 6.)

10 According to the Curcio Declaration, the SIR Exhibits additionally demonstrate
11 "that the rights to service the Loan for Fannie Mae were transferred from CitiMortgage,
12 Inc. to Fannie Mae (with Seterus, Inc. as sub-servicer for Fannie Mae) effective January
13 31, 2014." (*Id.* at 4.) But the document to which Mr. Curcio refers indicates that
14 CitiMortgage transferred 35,443 loans to Fannie Mae in January 2014. (*Id.* at 11.) Mr.
15 Curcio states that this lump transfer of servicing rights includes the Property's Loan; he
16 also asserts that it is the only servicing rights transfer for the Property in the SIR. (*Id.* at
17 4.) As such, Mr. Curcio claims, this SIR entry demonstrates that CitiMortgage, Inc.
18 serviced the Loan for Fannie Mae until January 31, 2014. (*Id.*) But on June 30, 2014, five
19 months after this transfer of servicing rights, CitiMortgage recorded the Corporate
20 Assignment Deed of Trust, which "convey[ed], grant[ed], assign[ed], transfer[red], and
21 set over the described Deed of Trust together with all interest secured thereby, all liens,
22 and any rights due or to become due thereon to" Fannie Mae. (Dkt. no. 33-1 at 17.)

23 Considering the early stage of this litigation, the lack of discovery, and Fannie
24 Mae and FHFA's reliance on printouts from Fannie Mae's internal tracking system to
25 demonstrate their interest in the Property, the Court cannot conclude that there is no
26 genuine dispute of material fact. Accordingly, although the Court agrees with Fannie
27 Mae and FHFA on the preemption issue, the Court will deny the Motion.

28 ///

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion or reconsideration as they do not affect the outcome of the Motion.

DATED this 16th day of March 2016


MIRANDA M. DU
UNITED STATES DISTRICT JUDGE